Liaw Kar Tay & Ors v Superintendent of Lands & Surveys Limbang Division & Anor

HIGH COURT (LIMBANG) — SUIT NO LMN-21-1/2 OF 2012
STEPHEN CHUNG JC
8 JULY 2013

Land Law — State land — Occupation of — Allegation that house built on parcel of land belonging to state since 1961 — Demand to demolish house and vacate land within 30 days via notice — Notice referred to another parcel of land — Whether notice regular — Whether notice null, void and of no effect — Occupation of land for nearly 50 years uninterrupted — Payment of electricity bill — Whether right in having expectation that land be given to squatters

The plaintiffs were the children of the late Liaw Kim Chiaw and Lim Siok Heou. According to the first plaintiff, together with their parents, they had lived and resided in a house built on a parcel of land since 1961. The land was allegedly bought from one Teo Kim Huan for RM500. The first plaintiff received a notice dated 28 June 2010 issued by the first defendant advising that the parcel of land belonged to the second defendant and it was demanded that they demolish any building on the land and vacate the land within 30 days from the date of the notice. The plaintiffs contended that the land was at all material times described as Lot 123 and that the notice was irregular because it referred to another parcel of land described as Lot 503. For that reason, they refused to vacate the land. Subsequently, their house was demolished and hence, the present action against the first and the second defendants for declarations that they were the rightful owners of the parcel of land described as Lot 123; that the notice was null, void and of no effect; and that the demolition of the house by the defendants was wrong and unlawful. The plaintiffs also claimed that they had suffered loss and damages and prayed for damages against the defendants to be assessed by the court. The first plaintiff claimed that they had lived and occupied the land for more than 50 years uninterrupted by the defendants. Since 1961, their parents and, after their parents had passed away, they had been paying assessment rates or council rates since 1972. They had also been paying for electricity and water bills since 1992 to Sesco. The plaintiffs submitted that since the defendants had accepted their payments for the assessment rates, electricity bills and water bills for so many years and did not require them to vacate the land, the defendants had given to them a licence to occupy the land and that the plaintiffs were licensees under the Sarawak Land Code ('Code'). It was also submitted that since they had

occupied the land for nearly 50 years uninterrupted and had applied for the land, they have an expectation that the land be given to them.

Held, dismissing the application with costs of RM10,000:

(1) Section 10(1) of the Code provided that no person may occupy or exercise any rights or privileges over any mixed zone land or native area land save under a valid and subsisting document of title and, if the land in question was unalienated, any occupier shall be deemed to be in unlawful occupation of state land. Section 2 provided that state land meant that all land for which no document of title had been issued (see para 7).

(2) The plaintiffs did not have any document to prove that the land belonged to Teo Kim Huan. They did not have any document of title to the land. They did not have and could not produce any sale and purchase agreement in respect of the land which the first plaintiff had alleged to have been bought by their parents from Teo Kim Huan. They did not have any memorandum of transfer signed by Teo Kim Huan in respect of the land. They did not produce any receipt that their parents had bought the house or the land from Teo Kim Huan. If Teo Kim Huan was the owner of the land, which their parents had bought and they did not have any document or were not given any document, they could have easily made a search at the lands and surveys and produced an extract of the land belonging to Teo Kim Huan or to their parents if it were true. They did not do so (see para 8).

(3) The letters of administration did not state that their parents or mother had any parcel of land or that the land belonged to their mother or inherited by her from their father. Obviously their parents did not have any land and the land did not belong to their parents (see para 9).

(4) The plaintiffs did not and could not produce any letter or application made by their parents for the title for the land to be issued to them. The evidence showed that the first plaintiff applied to the state land only by letter, which he referred to as Lot 123, occupied by them be given to them because they had lived on and occupied the land since 1961, that they were very poor and could not afford to buy a house or any land. He asked that his application be favourably be considered. From his letter, the plaintiffs had stated that the land was state land. It was clear that the land did not belong to them (see para 11).

(5) The land that the plaintiffs had been occupying was state land. They were squatters simpliciter on the state land. The plaintiffs did not have and could not produce any license or permit or any authorisation from the defendants to occupy the land. There was no evidence that they occupied the land with the consent or acquiescence of the defendants. There was

no evidence that the defendants or their servants or agents had encouraged or invited them to settle on the land. They did not testify that they had equity in the land. No license or acquiescence could arise or should be implied merely from their occupation of the land (see para 15).

[Bahasa Malaysia summary

Plaintif merupakan anak-anak mendiang Liaw Kim Chiaw dan Lim Siok Heou. Menurut plaintif pertama, mereka bersama-sama dengan ibu bapa mereka telah menduduki dan tinggal di rumah yang dibina di atas sebidang tanah sejak tahun 1961. Tanah tersebut didakwa dibeli dari seorang yang bernama Teo Kim Huan dengan harga RM500. Plaintif pertama menerima notis bertarikh 28 Jun 2010 yang dikeluarkan oleh defendan pertama memaklumkan bahawa petak tanah adalah milik defendan kedua dan dia menuntut mereka merobohkan mana-mana bangunan di atas tanah dan mengosongkan tanah tersebut dalam masa 30 hari dari tarikh notis. Plaintif menegaskan bahawa tanah itu adalah pada setiap masa digambarkan sebagai Lot 123 dan bahawa notis itu tidak tetap kerana ia menyentuh satu lagi sebidang tanah digambarkan sebagai Lot 503. Atas sebab itu, mereka enggan mengosongkan tanah itu. Selepas itu, rumah mereka telah dirobohkan dan dengan itu, tindakan ini terhadap defendan pertama dan kedua untuk pengisytiharan bahawa mereka adalah pemilik sah petak tanah digambarkan sebagai Lot 123; bahawa notis itu adalah tidak sah, tidak sah dan tidak mempunyai kesan; dan perobohan rumah oleh defendan adalah salah dan menyalahi undang-undang. Plaintif juga mendakwa bahawa mereka telah mengalami kerugian dan kerosakan dan menuntut ganti rugi terhadap defendan yang akan dinilai oleh mahkamah. Plaintif pertama mendakwa bahawa mereka telah menetap dan menduduki tanah itu selama lebih daripada 50 tahun tanpa gangguan daripada defendan. Sejak tahun 1961, ibu bapa mereka dan, selepas ibu bapa mereka telah meninggal dunia, mereka telah membayar cukai pintu atau kadar majlis sejak 1972. Mereka juga telah membayar bil elektrik dan bil air sejak tahun 1992 kepada Sesco. Plaintif berhujah bahawa memandangkan defendan telah menerima bayaran mereka untuk cukai taksiran, bil elektrik dan bil air selama bertahun-tahun dan tidak memerlukan mereka mengosongkan tanah itu, defendan telah memberikan kepada mereka lesen untuk menduduki tanah itu dan bahawa plaintif adalah pemegang lesen di bawah Kanun Tanah ('Kanun'). Ia juga berhujah bahawa kerana mereka telah menduduki tanah itu selama hampir 50 tahun tanpa gangguan dan telah memohon bagi tanah itu, mereka mempunyai jangkaan bahawa tanah itu diberikan kepada mereka.

Diputuskan, menolak permohonan dengan kos sebanyak RM10,000:

(1) Seksyen 10(1) Kanun memperuntukkan bahawa tiada seorang pun boleh menduduki atau menjalankan apa-apa hak atau keistimewaan ke atas mana-mana tanah zon campuran atau tanah kawasan anak negeri kecuali

di bawah dokumen yang sah dan yang wujud hak milik dan, jika tanah yang berkenaan tidak diberi milik, mana-mana penduduk hendaklah dianggap berada dalam penghunian menyalahi undang-undang tanah kerajaan. Seksyen 2 memperuntukkan bahawa tanah kerajaan bermakna bahawa semua tanah yang baginya tiada dokumen hak milik telah dikeluarkan (lihat perenggan 7).

(2) Plaintif tidak mempunyai apa-apa dokumen untuk membuktikan bahawa tanah itu milik Teo Kim Huan. Mereka tidak mempunyai apa-apa dokumen hak milik kepada tanah itu. Mereka tidak mempunyai dan tidak dapat mengemukakan apa-apa perjanjian jual beli berkenaan dengan tanah yang plaintif pertama telah dikatakan telah dibeli oleh ibu bapa mereka dari Teo Kim Huan. Mereka tidak mempunyai apa-apa memorandum pemindahan yang ditandatangani oleh Teo Kim Huan berkenaan dengan tanah itu. Mereka tidak mengemukakan apa-apa penerimaan yang menunjukkan ibu bapa mereka telah membeli rumah atau tanah daripada Teo Kim Huan. Jika Teo Kim Huan adalah pemilik tanah itu, yang telah dibeli oleh ibu bapa mereka dan mereka tidak mempunyai apa-apa dokumen atau tidak diberi apa-apa dokumen, mereka boleh dengan mudah membuat carian di pejabat tanah dan ukur dan mengekstrak tanah milik untuk Teo Kim Huan atau kepada ibu bapa mereka jika ia benar. Mereka tidak berbuat demikian (lihat perenggan 8).

(3) Surat kuasa tidak menyatakan bahawa ibu bapa atau ibu mereka mempunyai mana-mana petak tanah atau bahawa tanah itu milik ibu atau diwarisi oleh beliau dari bapa mereka. Jelas sekali ibu bapa mereka tidak memiliki mana-mana tanah dan tanah itu bukan milik ibu bapa mereka (lihat perenggan 9).

(4) Plaintif tiada dan tidak dapat mengemukakan apa-apa surat atau permohonan yang dibuat oleh ibu bapa mereka untuk hak milik bagi tanah yang hendak dikeluarkan kepada mereka. Keterangan menunjukkan bahawa plaintif pertama memohon untuk tanah kerajaan itu melalui surat, yang dirujuk sebagai Lot 123, diduduki oleh mereka akan diberikan kepada mereka kerana mereka telah tinggal di dan menduduki tanah itu sejak 1961, bahawa mereka sangat miskin dan tidak mampu untuk membeli rumah atau mana-mana tanah. Dia memohon bahawa permohonannya akan memihak kepadanya dan dipertimbangkan. Daripada surat itu, plaintif telah menyatakan bahawa tanah itu adalah tanah kerajaan. Ia adalah jelas bahawa tanah itu bukan milik mereka (lihat perenggan 11).

(5) Tanah yang telah diduduki oleh plaintif adalah tanah kerajaan. Mereka adalah setinggan simpliciter di atas tanah kerajaan. Plaintif tidak mempunyai dan tidak dapat mengemukakan apa-apa lesen atau permit atau apa-apa kebenaran daripada defendan untuk menduduki tanah itu. Tidak terdapat bukti bahawa mereka menduduki tanah itu dengan

kebenaran atau persetujuan defendan. Tidak terdapat bukti bahawa defendan atau pekerja mereka atau ejen-ejen berkenaan menggalakkan atau menjemput mereka untuk menetap di atas tanah tersebut. Mereka tidak memberi keterangan bahawa mereka mempunyai ekuiti terhadap tanah tersebut. Tiada lesen atau persetujuan boleh timbul atau patut tersirat semata-mata dari penghunian mereka di tanah itu (lihat perenggan 15).]

Notes

For a case on occupation of state land, see 8(2) *Mallal's Digest* (4th Ed, 2013 Reissue) para 5202.

Cases referred to

Bohari bin Taib & Ors v Pengarah Tanah Galian Selangor [1991] 1 MLJ 343; [1991] 1 CLJ (Rep) 48, SC (refd)

Darahman bin Ibrahim & Ors v Majlis Mesyuarat Kerajaan Negeri Perlis & Ors [2008] 4 MLJ 309; [2008] 4 CLJ 538, CA (refd)

Sentul Murni Sdn Bhd v Ahmad Amirudin bin Kamarudin & Ors [2000] 4 MLJ 503; [2000] 4 CLJ 375, CA (refd)

Legislation referred to

Sarawak Land Code (Cap 81) ss 10(1), 44, 209(1), (1)(a), (2), 209B(1)(c)

Chua Kuan Ching (Baru Bian & Co) for the plaintiffs.

Nur Azhar Bin Bujang (Sarawak Attorney General's Chambers, Kuching) for the defendants.

Stephen Chung JC:

[1] The plaintiffs are the children of the late Liaw Kim Chiaw and Lim Siok Heou (f). The first plaintiff testified that since 1961 they together with their parents had lived and resided in a house built on a parcel of land described as Lot 123, Kampung Seloting, Lawas. He said that their parents bought this parcel of land from a Teo Kim Huan for RM500 by paying RM5 monthly instalments. He said the sum of RM500 together with interest was finally paid in 1972. He testified that in 1984 a Liaw Cheng San and his family occupied another house on the land by the permission of their parents. He said that Teo Kim Huan passed away in the 1980s and that the Liaw family left and vacated the house in 2004.

[2] The first plaintiff testified that he received a notice dated 28 June 2010 issued by the first defendant addressed to him and Liaw Cheng San. The notice advised that the parcel of land described as Lot 503 Lawas Town District belonged to the state government (the second defendant) and demanded that

they demolished any building on the land and vacated the land within 30 days from the date of the notice. The plaintiffs contended that the land was at all material times described as Lot 123 and that the notice was irregular because it referred to another parcel of land described as Lot 503. The plaintiffs contended for that reason they refused to vacate the land. Subsequently their house was demolished by the servants and or agents of defendants when the plaintiffs refused to vacate the land.

[3] The plaintiffs filed this action against the first and the second defendants for a declaration that they are the rightful owners of the parcel of land described as Lot 123, that the notice was null, void and of no effect and that the demolition of the house by the defendants was wrong and unlawful. The plaintiffs claimed that they had suffered loss and damages and prayed for damages against the defendants to be assessed by the court.

[4] The first plaintiff said that although they did not have any legal document or any document of title to the land, since 1961 they had lived and occupied the land for more than 50 years uninterrupted by the defendants. He testified that since 1961 their parents and, after their parents had passed away, they had been paying assessment rates or council rates since 1972. The first plaintiff testified that since electricity was connected to their house in 1992 they had been paying the Sesco and water bills. He said that their parents had applied for the title to the land. Since then he had also applied to the lands and surveys for the title to the land but had been unsuccessful.

[5] The plaintiffs contended that the defendants had recognised or acknowledged their ownership of the land because they were required to pay assessment rates in respect of the land and that the State authorities had agreed to supply electricity and water to them at the land. The plaintiffs submitted that since the defendants had accepted their payments for the assessment rates, electricity bills and water bills for so many years and did not require them to vacate the land, the defendants had given to them a licence to occupy the land and that the plaintiffs are licensees under the Land Code. It was also submitted that since they had occupied the land for nearly 50 years uninterrupted and had applied for the land, they have an expectation that the land be given to them.

[6] The plaintiffs referred to several authorities in support of their claims to an expectation to be alienated or granted the land to them. In *Bohari bin Taib & Ors v Pengarah Tanah Galian Selangor* [1991] 1 MLJ 343; [1991] 1 CLJ (Rep) 48, the plaintiffs occupied the land for three years under licence and thereafter had remained in occupation with the continued consent of the state government by virtue of the 1980 alienation already approved prior to the TOLs (temporary occupation licences). In *Sentul Murni Sdn Bhd v Ahmad Amirudin Bin Kamarudin & Ors* [2000] 4 MLJ 503; [2000] 4 CLJ 375, the

respondents were not squatters simpliciter but were in occupation of the land as licensees and with the consent of the previous owner. In *Darahman bin Ibrahim & Ors v Majlis Mesyuarat Kerajaan Negeri Perlis & Ors* [2008] 4 MLJ 309; [2008] 4 CLJ 538, the appellants in that case had moved to and occupied an area called Lubuk Sireh in Perlis on the promise of the Perlis state government. They were accepted as participants of the Felcra scheme. The facts in those cases were different from the facts and circumstances in this suit.

[7] Section 10(1) of the Sarawak Land Code (Cap 81) provides that no person may occupy or exercise any rights or privileges over any mixed zone land or native area land save under a valid and subsisting document of title and, if the land in question is unalienated, any occupier thereof shall be deemed to be in unlawful occupation of state land. Section 2 provides that state land means all land for which no document of title has been issued.

[8] The plaintiffs did not have any document to prove that the land belonged to Teo Kim Huan. They did not have any document of title to the land. They did not have and could not produce any sale and purchase agreement in respect of the land which the first plaintiff had alleged to have been bought by their parents from Teo Kim Huan. They did not have any memorandum of transfer signed by Teo Kim Huan in respect of the land. They did not produce any receipt that their parents had bought the house or the land from Teo Kim Huan. If Teo Kim Huan was the owner of the land, which their parents had bought and they did not have any document or were not given any document, they could have easily made a search at the lands and surveys and produced an extract of the land belonging to Teo Kim Huan or to their parents if it were true. They did not do so.

[9] Further, the plaintiffs had exhibited a letters of administration in the estate of their mother dated 26 March 2007. The letters of administration did not state that their parents or mother had any parcel of land or that the land belonged to their mother or inherited by her from their father. Obviously their parents did not have any land and the land did not belong to their parents.

[10] The plaintiffs did not testify that the house in which they lived was built by their parents on the land. Instead it was pleaded that they lived and resided in the house built on the land by Teo Kim Huan who claimed to be the owner of the land. The plaintiffs must be bound by their pleadings. Obviously their parents had rented the house from Teo Kim Huan from the fact that their parents paid RM5 per month as rental to Teo Kim Huan. The evidence showed that the house or the land did not belong to them.

[11] The evidence showed that the plaintiffs did not and could not produce any letter or application made by their parents for the title for the land to be

issued to them. The evidence showed that the first plaintiff only by a letter dated 25 May 1994 applied that the state land, which he referred to as Lot 123, occupied by them be given to them because they had lived on and occupied the land since 1961, that they were very poor and could not afford to buy a house or any land. He asked that his application be favourably be considered. From his letter, the plaintiffs had stated that the land was state land. It was clear that the land did not belong to them.

[12] By a letter dated 9 June 1994, on behalf of the first defendant, in reply to the first plaintiff's letter, it was stated that the record showed that two houses built on the land were occupied by Liaw Cheng San and Lim Siok Heou (their mother) and that the land was previously occupied by Liaw Kim Loh. The letter sought the first plaintiff's explanation to his relationship to these three persons before the lands and surveys would consider the application. Obviously the first plaintiff had replied to that letter and the first defendant had by a letter dated 22 June 1994 advised that the application was receiving attention in due course. There were several subsequent letters advising the first plaintiff that his application was being referred to higher authority for consideration. Eventually, by a letter dated 2 November 2001, the first plaintiff was informed that his application was not successful.

[13] The defendants contended that subsequent to the letter dated 2 November 2001, their mother Lim Siok Heou and Lim Cheng San had agreed to vacate the land if the land which was then referred to as Lot 503, instead as Lot 123, was required by the state government. It was put to the plaintiffs that their mother and Lim Cheng San had signed the handwritten acknowledgement dated 27 February 2004 and the first plaintiff said he was not aware of that. The evidence showed that the first plaintiff applied again on 21 July 2004 for the land to be given to them and it was again rejected by a letter dated 4 August 2004 from the first defendant's office.

[14] Subsequent to the two applications, the plaintiffs did not exhibit or referred to any document or had taken any steps to pursue the matter with the defendants in respect of the land. They did not appeal or challenge the decision of the Superintendent or the Director of the Lands and Surveys in rejecting their application for the land. About six years later, the first plaintiff received the abovementioned letter dated 28 June 2010 demanding that they vacated the land within 30 days from the date of the letter.

[15] From the evidence before the court, the land that the plaintiffs had been occupying was state land. They were squatters simpliciter on the state land. The plaintiffs did not have and could not produce any license or permit or any authorisation from the defendants to occupy the land. There was no evidence that they occupied the land with the consent or acquiescence of the defendants.

There was no evidence that the defendants or their servants or agents had encouraged or invited them to settle on the land. They did not testify that they had equity in the land. No license or acquiescence could arise or should be implied merely from their occupation of the land.

[16] Section 44 of the Land Code provides that no person shall acquire any right or title against the government by virtue of any adverse possession, unlawful occupation or occupation under temporary license, and no right or title shall be acquired against the government, save such right or title as may be lawfully granted under the Land Code.

[17] Section 209(1)(a) of the Land Code provides that any person who without lawful authority occupies or erects any building on any state land shall be guilty of an offence. Sub-section (2) states that a person shall be deemed to have committed an offence under sub-s (1) if it is proved that he has asserted or attempted to assert any right or privilege over state land and is unable to satisfy the court that he is by law entitled to assert such right or privilege. Section 209B(1)(c) provides that when there is reason to believe that an offence against s 209(1) has been committed, any officer duly authorised by the director may demolish any building or take possession of any land together with all buildings upon or affixed thereto.

[18] In this action, the plaintiffs did not complain that the officers who demolished the house were not authorised by the director to do so. They also did not complain that the process or procedures carried out to demolish the building on the land were not in accordance with the laws. The plaintiffs had sufficient notice since 1994 that they were without lawful authority in occupying the land. Since 2004 they had been advised to vacate the land and their mother had agreed to do so. Therefore there were no merits in the plaintiffs' case as pleaded in their statement of claim that they were the owner or entitled to the land or be granted the land or had an expectation to be granted the land.

[19] Although the plaintiffs and their parents had paid assessment to the law as District Council since 1972, the rates receipts or rates demand notes stated that they were for services such as street lighting, road maintenance and fire fighting provided by the council. The rates receipts or rates demand notes were issued in the name of Liaw Kim Chiaw and not to them or to their parents. There was no reference to any ownership of the land. The payments for the bills to Sesco and the water board were for electricity and water supplied to their house.

[20] These did not in any way constitute acknowledgement by the council or Sesco that the plaintiffs were the owner of the house or the land. The plaintiffs

did not plead and did not lead any evidence that the council or Sesco had the authority to approve or had acknowledged their ownership of the land. They did not plead and did not lead any evidence that the council or Sesco had or were authorised to represent the state government as such. There was no evidence that the council or Sesco or water board had given any expectation to the plaintiffs that the plaintiffs would be given the land or were entitled to occupy the land.

[21] Further, there was no evidence that the defendants or their officers or servants or agents had encouraged or made any promise or gave any expectation to the plaintiffs that the plaintiffs would be given the land. Instead, the evidence showed that their parents moved from Brunei to settle in Kpg Seloting, Lawas. The evidence showed that their parents had rented the house built by Teo Kim Huan on the state land. The evidence showed that after the defendants had rejected their applications to be alienated the land, the defendants had offered a parcel of land to the plaintiffs in lieu of Lot 503. The first plaintiff said that they rejected this offer because the land offered to them was quite far. Therefore there were no merits in the plaintiffs' submissions.

[22] For the reasons given, the plaintiffs have failed to prove their claims against the defendants in this action. The plaintiffs' action is dismissed with costs of RM10,000.

Application dismissed with costs of RM10,000.

Reported by Afiq Mohamad Noor